IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5585 of 2003
Date of Decision: 4.8.2010.

Gurnam Singh --Petitioner

Versus

U.H.V.P.N.L and others --Respondents

CORAM:- HON'BLE MR.JUSTICE PERMOD KOHLI.

Present:- Mr. G.S. Goraya, Advocate for the petitioner.

Ms. Vandana Malhotra, Advocate for the respondents.

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PERMOD KOHLI.J (ORAL)

This revision is directed against the order dated 19.9.2003 passed by the Addl. Civil Judge (Sr. Divn.), Pehowa. Vide the impugned order the learned Trial Court has allowed an application filed by the respondents-defendants for recalling witness Pushpinder Kaur and production of certified copies of her statement made in another criminal case.

Briefly stated the facts as have emerged from the impugned order are that the petitioners-plaintiffs filed a suit for permanent injunction in the Court of Addl. Civil Judge (Sr. Divn.), Pehowa. Evidence of both the parties came to be closed except the rebuttal evidence of the plaintiffs. The case was posted for rebuttal evidence and the arguments. It is at this stage that the respondents-defendants attempted to produce certified copies of statements of Pushpinder Kaur wife of the plaintiff made in criminal proceedings in which she was a complainant. Production of these certified copies was not permitted. This prompted the defendants to make an application under order 18 rule 17-A of C.P.C for additional evidence and

recalling the witness. After hearing the parties and in view of the repeal of provisions of Rule 17-A of Order 18, the Trial Court treated the application under section 151 C.P.C, allowed the same vide the impugned order. Certified copies of the statement were allowed to be taken on record and the Pushpinder Kaur wife of the present petitioner, who had earlier appeared as a witness has been recalled to prove the certified copies of her statement.

When notice of motion was issued in this case, proceedings before the Trial Court were stayed. As a result the trial of the suit is suspended since then. Petitioners have chosen not to appear, even though, the case was listed and shown in the cause list a number of times. One of the ground for challenging the impugned order is that after the repeal of the provisions of Rule 17-A of Order 18, the Trial Court was not justified in invoking the provisions of Section 151 C.P.C as the same is in direct violation of Section 33 of the Evidence Act.

The contention seems to be misplaced. Section 33 of the Evidence Act makes the evidence given by a witness in judicial proceedings relevant at a later stage of the same judicial proceedings or any other subsequent proceedings, even if, the witness is dead or cannot be found or is incapable of giving evidence or his presence cannot be secured. That does not mean that the evidence becomes irrelevant where the presence of the witness can be procured to confront him with the statement made in previous judicial proceedings, if, the conditions under proviso to section 33 are satisfied. Section 145 of the Evidence Act permits the cross-examination of a witness as to the previous statements in writing. Similarly, Section 157 provides for corroboration of the testimony of the witness on the basis of a formal statement relating to the same fact or issue. From the

conjoint reading of the aforementioned provisions the plea raised by the petitioner that during the life time of the witness his/her earlier statement cannot be confronted, is totally misconceived and amounts to misapplication of law. Rather various provisions of the Evidence Act facilitate the production of such evidence particularly to confront the witness with his previous statement made in judicial proceedings which alone can sub serve the justice. Apart from the above the order passed by the Trial Court is in the realm of judicial discretion. If, a judicial discretion is validly exercised, no interference is warranted in exercise of the revisional jurisdiction, even if, it causes some prejudice to the opposite side.

In view of the above, this petition is dismissed.

(PERMOD KOHLI)
JUDGE

8.2010.
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Whether to be reported? Yes.